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November 27, 1972

DEPARTMENT OF LAW LETTER OPINION NO. 73-1-L (R-2)

REQUESTED BY: ANDREW L. BETTWY
Commissioner
Arizona State Land Department

QUESTION: If a decision is made to deny an application relating to state land, thereby subjecting the decision to a 30 day statutory time for appeal, can the applicant waive the 30 day appeal period and resubmit the same application for reconsideration immediately?

ANSWER: See body of opinion.

The relevant statute is A.R.S. § 37-214, which states in part:

A. An appeal from a final decision of the state land commissioner relating to classification or appraisal of lands or improvements may be taken to the board of appeals by any person adversely affected by the decision. Appeal shall be taken by giving notice thereof in writing to the commissioner within thirty days from the date notice of the decision is mailed to the last known post-office address of the appellant by the commissioner.

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D. An appeal from a final decision of the board of appeals or a final decision of the commissioner not relating to the classification or appraisal of lands or improvements may be taken by the commissioner or any person adversely affected by the decision to the superior court of the county in which the major portion of the land or improvements involved in the appeal is located.

E. Appeal shall be taken by filing notice thereof in writing with the commissioner and by serving any adverse party with a copy of the notice within thirty days from

the date notice of the decision is mailed to the last known post-office address of the appellant. Upon service of the notice the commissioner shall prepare a record of the entire proceedings and transmit it to the clerk of the superior court to which the appeal is taken. The clerk shall docket the appeal in the name of the appellant as plaintiff and appellee as defendant. The appeal shall then be ready for trial. The appeal shall be heard de novo at the earliest practical time by the court without a jury. The court shall hear evidence, make independent findings of fact and conclusions of law from the evidence submitted, and shall either affirm, reverse or modify the decision appealed from. The decision of the superior court may be appealed to the supreme court in the manner appeals are allowed to that court from final judgments in civil actions.

F. If no appeal is taken, the decision of the commissioner or the board of appeals, as the case may be, shall be final and conclusive.

A denial of an application is considered a decision of the Commissioner. Pursuant to statutory authority found in A.R.S. § 37-214.D, any person adversely affected by a decision of the State Land Commissioner not relating to classification or appraisal may appeal the adverse decision to the superior court. A.R.S. § 37-214.E limits the allowable time for appeal to 30 days after the decision is made. Should the applicant denied a lease or permit choose not to appeal the decision, Subsection F of the above quoted statutes states: "If no appeal is taken, the decision of the commissioner. . . shall be final and conclusive."

If, however, the applicant should choose to appeal the decision, and then decides to waive his right to appeal, the appeal must be waived in a correct manner to be effective. The validity of a waiver then depends upon the type of appeal being sought by the applicant. If the appeal deals with a classification or appraisal under A.R.S. § 37-214.A, the appeal must be directed to and is under the jurisdiction of the Board of Appeals of the State Land Department. Likewise,

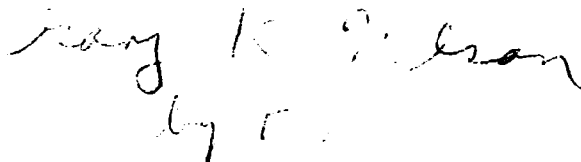
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a waiver on this type of appeal must be directed to and received by the Board of Appeals. The same theory holds true for an appeal brought under A.R.S. § 37-214.D not relating to classification or appraisal. In this type of appeal, the action must be brought in superior court and, therefore, to be effective a waiver must be filed and accepted by the superior court.

In summation, then, a waiver under A.R.S. § 37-214.D (in an appeal not involving classification or appraisal) directed to the State Land Department would not be effective since the Board of Appeals has no jurisdiction to receive the appeal. Conversely, a waiver under A.R.S. § 37-214.A (involving an appeal from an appraisal or classification) would not be effective if sent to the superior court, as the court's jurisdiction arises only after administrative remedies are exhausted.

From the foregoing, it is concluded that if an applicant waives his right to appeal any time within the 30 day appeal period, the waiver terminates any right to appeal only if it is directed to and accepted by the proper administrative or judicial tribunal. In that event the waiver exhausts any time that might remain of the appeal. The date of the acceptance of the waiver makes the decision of the Commissioner final as opposed to the ordinary date (31 days after the decision of the Commissioner was mailed). Once the decision is final, and no prior applications are pending, any person, including a previous applicant, qualified under Rule 3 of the General Leasing Rules of the State Land Department, may make an application for a permit.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Gary K. Nelson".

GARY K. NELSON
The Attorney General

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